

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of the Commission's Rules)	
Regarding Installment Payment Financing for)	
Personal Communications Services (PCS))	
Licensees)	WT Docket No. 97-82

**COMMENTS OF
THE RURAL TELECOMMUNICATIONS GROUP
AND THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

The Rural Telecommunications Group ("RTG") and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), hereby respectfully submit these comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Further Notice of Proposed Rulemaking*, WT Docket No. 97-82, FCC 00-197, released June 7, 2000 regarding the Commission's tentative decision to revise certain aspects of the Commission's PCS C and F block rules.¹ The Commission is seeking to reconfigure each 30 MHz C block license in order to allow entities other than "designated entities" to have access to scarce Commercial Mobile Radio Service ("CMRS") spectrum to provide third-generation ("3G") and wireless Internet applications. While RTG and OPASTCO applaud the Commission's commitment to speeding new wireless services to the nation, RTG and OPASTCO caution the FCC that its proposed rules will favor large, urban entities, leaving rural areas and rural wireless carriers without the spectrum needed for the provision of

¹ *In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Service (PCS) Licensees*, WT Docket No. 97-82, *Further Notice of Proposed Rulemaking*, FCC 00-

new wireless services in contravention of Section 309(j) of the Communications Act, as amended (“Act”).²

I. Statement of Interest

RTG is a group of rural telecommunications providers who have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. All of RTG’s members, either directly or through affiliates, provide local exchange telephone service in rural areas, and are either contemplating expansion into new types of wireless services, or have already diversified their service offerings to provide such wireless services. Many of RTG’s members have participated in and won licenses in previous FCC spectrum auctions, including the previous C and F Block PCS auctions, and are contemplating participation in the upcoming C and F Block reauction that is the subject of the *Further Notice of Proposed Rulemaking*. The experience of RTG members as winners of previously auctioned PCS C and F Block licenses, and as operators of systems using this spectrum, gives RTG particular insight into this proceeding.

OPASTCO is a trade association of over 500 independently owned and operated incumbent local exchange carriers serving rural areas of the United States. A third of OPASTCO members provide wireless service to consumers in rural areas. Many have or are considering expanding their service offerings to include advanced services, including wireless services, to the rural regions they are committed to serve. OPASTCO members have participated in, and won licenses in previous spectrum

197 (rel. June 7, 2000). (“*Further Notice of Proposed Rulemaking*”).

² RTG and OPASTCO question the need for such a quick comment cycle. With the auction delayed until November 29, 2000, RTG and OPASTCO question whether the Commission is attempting, with its uncharacteristically short comment cycle, to square away the PCS C and F block rules in time for the large entities to develop their strategic plans in the upcoming SMR and 700 MHz auctions. While RTG and OPASTCO appreciate the FCC’s tacit

auctions, and are planning to participate in the upcoming PCS C and F block reauction that is the subject of this proceeding.

II. Discussion

A. The Commission Must Not Abandon Section 309(j)

The Commission's proposal to open up bidding to entities other than "designated entities"³ dilutes the Commission's mandate, under Section 309(j) of the Act, to promote "the development and rapid deployment of new technologies, products, and services for the benefit of the public, *including those residing in rural areas...*"⁴ By allowing large entities to bid on one or two of the 10 MHz blocks, depending upon population, the Commission is denying rural telephone companies the legitimate chance to successfully bid for spectrum as required by Section 309(j) of the Act.⁵ The Commission's 309(j) responsibility to designated entities does not just apply to the C and F blocks, it applies to all spectrum and all services. Out of *all* allocated PCS spectrum, only the C and F blocks were set aside to meet the Section 309(j) mandate. There were no eligibility restrictions and bidding credits for the PCS A, B, D, and E blocks. Now, the FCC is chipping away at what is the last chance for rural telephone companies to bid on PCS licenses "without competition from the large telephone companies and other deep-pocketed bidders."⁶

acknowledgement of business plans, it appears that in this proceeding, both the rules and the timing may serve to favor large, non-rural entities.

³ In this and related proceedings, the listed entities in Section 309(j) have been collectively referred to as "designated entities." *See generally, In re Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Second Report and Order*, 9 FCC Rcd 2348 (1994).

⁴ 47 U.S.C. § 309(j)(3)(A) (emphasis added).

⁵ 47 U.S.C. § 309(j)(3)(B) (requiring the FCC to avoid excessive concentration of licenses and to promote the dissemination of licenses to rural telephone companies and other designated entities).

⁶ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Report and Order*, 9 FCC Rcd 5532, ¶ 153, (1994).

The Commission has yet to justify diluting its once-recognized 309(j) “directive that [it] ensure that rural telephone companies have the opportunity to participate in the provision of spectrum-based services, and to satisfy [its] goals to ensure that PCS is provided to all areas of the country, including rural areas.”⁷ RTG and OPASTCO remain mindful of that statutory mandate. The justification the Commission provides in its *Further Notice of Proposed Rulemaking* for opening up bidding eligibility is that its rules “have steadily evolved in response to legislative changes, judicial decisions, the needs of licensees striving to succeed in a rapidly developing wireless market, and the demand of the public for greater access to wireless services.”⁸ Yet the Commission must recognize that opening up bidding eligibility will ultimately leave rural carriers without the necessary spectrum to provide the full range of advanced 3G services. Rural consumers should not be left behind.

B. Rural Areas Need More Than 10 MHz for 3G Services

A 10 MHz set-aside for designated entities is insufficiently robust to deliver new wireless Internet technologies and other 3G services to rural consumers. As the FCC concedes, a 10 MHz C block license is a viable minimum size for “voice and *some* data services, including Internet access.”⁹ The FCC’s proposed rule changes will relegate rural areas to less than the full range of CMRS services. *Some* data services is not enough to meet the mandate of 309(j) and will deny rural consumers access to comparable services. RTG and OPASTCO propose that at least 20 MHz be set aside for designated entities in all markets in order for rural customers, including those who live in Tier 1 markets, to have access to competitive PCS spectrum that can realistically offer 3G services. After the upcoming

⁷ *Id.*

⁸ *Further Notice of Proposed Rulemaking* at ¶ 9.

⁹ *Id.* at ¶ 16 (emphasis added).

PCS reauction, there will be no more opportunities for rural telephone companies to acquire PCS spectrum. The Commission must provide rural telephone companies with meaningful opportunities to acquire PCS spectrum in this proceeding or it may never happen.

C. Measuring Service, Prior to Buildout Deadlines, Is Premature

The FCC has seemingly been swayed by the larger entity argument that the rules need to be changed due to the relatively small percentage of C and F block licensees that are currently providing service.¹⁰ The initial C block licenses were awarded in Auction No. 5, which ended on May 6, 1996, and Auction No. 10, which ended July 16, 1996. The initial F block auction, Auction No. 11, ended January 14, 1997. The five-year buildout deadlines for the majority of licenses are still over one to three years away.¹¹ It is disingenuous for the large carriers to make this argument and it is premature for the Commission to base policy on such an argument.

D. Bankruptcies Do Not Justify Wholesale Rule Changes

As the Commission is well aware, the lack of substantial buildout in the largest markets is due to the bankruptcies of a few entities caught unaware by the realities and costs of running a wireless network. While installment payments turned out, in practice, to be a protracted detour into the intricacies of bankruptcy law for telecommunications attorneys, the failure of this one portion of competitive bidding for designated entities does not justify abandoning the rest of the program which has been quite successful. RTG members and OPASTCO members who successfully bid for PCS spectrum have made good on their installment payments. Countless other designated entities were true

¹⁰ *Further Notice of Proposed Rulemaking* at ¶ 2.

¹¹ Nearly a third of the licenses acquired in the C and F block auctions were licensed within the last year, with their construction deadlines falling at the end of 2004.

to their word and paid their debt to the government. RTG members and OPASTCO members are busy constructing and running PCS networks in rural areas, unlike large carriers who generally ignore rural regions.¹² Neither bankruptcies nor hollow concerns about buildout justify the FCC's drastic paring of its eligibility rules.

E. Bidding Credits Are No Match for the "Deep-Pockets" of Large Entities

RTG and OPASTCO support the Commission's expansion of bidding credits for small and very small businesses. However, even a 45 percent bidding credit will make no difference when a very small rural telephone company is bidding against a deep-pocketed bidder, intent upon aggregating additional spectrum or creating a nationwide (with the exclusion of building out in rural areas) footprint. While set-asides give rural carriers a fair chance at acquiring spectrum, a 45 percent bidding credit is scant comfort to a rural carrier that is poised against a nationwide carrier with access to vast amounts of capital. RTG and OPASTCO suggest increased bidding credits if the Commission insists upon open bidding in some 10 MHz blocks.

III. Conclusion

RTG and OPASTCO appreciate the Commission's concern for delivering 3G services as soon as possible since "the embarrassing truth is that the American wireless industry is about 18 months behind Europe's; and, when it comes to wireless Internet, Europe's is itself 18 months behind Japan's."¹³ However, the Commission's zeal to promote 3G services should not ignore the needs and

¹² The only way the Commission can ensure that rural areas are served when large, urban-biased carriers obtain spectrum is to adopt an approach similar to its licensing of cellular systems, allowing other carriers to serve areas that were "unserved" after five years. *See* 47 C.F.R. § 22.949. Such a rule would meet the mandate of 47 U.S.C. § 309(j)(4)(B) which requires "performance requirements... to speed delivery of service to rural areas."

¹³ *The Economist*, March 11, 2000.

demands of rural citizens for the same services available in urban areas. Congress, in crafting Section 309(j), recognized that special incentives were needed to speed the deployment of advanced service to rural areas through rural telephone companies. The Commission must refrain from further eroding its competitive bidding rules and take action to implement the statutory mandates of Section 309(j).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Joy Barksdale, an employee at the Law Offices of Bennet & Bennet, PLLC, hereby certify that the foregoing Comments have been served via hand delivery on the following, this 22nd day of June, 2000:

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